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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

Estate of ROBERT B. BURLIN, Deceased.	
TOM HOOVER et al., Petitioners and Respondents, v. ENDI NOEL FELIX, Objector and Appellant.	A153321 (Alameda County Super. Ct. No. RP16824155)

In this probate proceeding concerning the estate of decedent Robert B. Burlin, Endi Noel Felix (Felix) appeals from an amended judgment in which the court: (1) declared void a grant deed transferring the title of real property on which the decedent's residence was situated to Felix; and (2) declared invalid a will codicil in which, as an alternative, the decedent bequeathed the real property to Felix. The amended judgment also provided that Felix was liable to the probate estate for twice the value of the real property at the time of its recovery as a penalty under Probate Code section 859.[1] We affirm.

[1] All further unspecified statutory references are to the Probate Code.

FACTUAL AND PROCEDURAL BACKGROUND

Our factual and procedural background sets forth only those facts as are necessary to resolve this appeal and is based in large part upon the trial court's comprehensive statement of decision.

On March 8, 2016, at the age of 87, Robert Burlin, "an exceedingly erudite, yet somewhat cantankerous, and certainly old-fashioned, retired professor of drama at Bryn Mawr College," died in his home. "This case considers the legitimacy of [a] grant deed and will codicil executed by Burlin in the final days of his life that transferred ownership of that home to [Felix], a handyman, rather than to Burlin's longtime friends and caretakers, [respondents] Richard Louis James and Tom Hoover."

The history of Burlin's testamentary plans for his home are not in dispute. In a 2006 will, Burlin bequeathed the home to James, and made a monetary bequest to Hoover. In a 2010 codicil to the will, Burlin deleted the monetary bequest to Hoover, and bequeathed the home to James and Hoover, as co-equal distributees. Thereafter, Burlin executed a 2014 holographic will, revoking all previous wills and codicils, but again bequeathing the home, and its contents, to James and Hoover, as co-equal distributees.

Subsequently, on February 28, 2016, Burlin signed a typed codicil to his 2014 holographic will in which he "clarifie[d]" his intent to bequeath the home (hereinafter also referred to as Property) to Felix, noting that "a Grant Deed," effecting a transfer of the home from Burlin to Felix, had been "signed and notarized on February 25, 2016." The codicil further provided: "Upon my death, this Property was previously to be bequeathed equally to Thomas Hoover and Richard Lewis [sic] James under my last will and testament dated July 14, 2014 (the 'Will'). However, I have changed my mind as to who I wish to leave the aforementioned Property to and now wish for Endi N. Felix to be the recipient. The Property was deed [sic] to Endi N. Felix with this intent and if, for any reason, the Property is still in my name or in any way to be considered to be part of my

estate at the time of my death, this statement is intended to supersede the provision in the Will leaving the Property to Thomas Hoover and Richard Lewis [sic] James and to document my intent to now bequeath the Property, free and clear of all encumbrances, to Endi N. Felix. I am of sound mind and not acting under any duress or undue influence."

Following Burlin's death, his close friend Martin Mastascusa, named as executor in the 2014 holographic will, filed a petition to probate the 2014 will and sought issuance of letters testamentary. Felix petitioned the court for admission of the 2014 holographic will as modified by the 2016 will codicil (hereinafter referred to as "codicil"). James and Hoover filed a contest to the codicil on several grounds, including undue influence. They also filed a section 850 petition seeking to void the related 2016 grant deed (hereinafter referred to as "grant deed" or "deed") on several grounds, including undue influence. The court accepted the 2014 holographic will for probate and named Mastascusa as executor. James and Hoover's codicil contest and petition challenge to the related grant deed were consolidated for trial.

As Felix candidly concedes in his opening brief, the trial court "composed an excellent Factual and Procedural Summary in the Final Statement of Decision."[2] Felix

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[2] Despite Felix's concession, Felix makes isolated comments in his briefs that the court was "impliedly bias" against him, and had conducted the trial in a manner prejudicial to him. However, the briefs do not contain a separate argument with its own heading seeking reversal based on judicial bias or misconduct. California Rules of Court, rule 8.204(a)(1)(B) requires, in pertinent part, that each brief must "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority." The rule "was designed to lighten the labors of the appellate [courts] by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass. An appellant's brief which fails to comply is equally confusing to the respondent, who labors under an unwarranted handicap in attempting to understandingly reply. There is no reason—no great or insurmountable difficulty is presented by the rule—why there should not be a compliance.' " (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325.) Consequently, we treat any purported claim of judicial bias or misconduct "for what it is, a presentation

further concedes the trial court heard "incredibly conflicting and messy accounts" of the circumstances surrounding the creation, execution, and notarization of the deed, and the creation, execution, and witness attestation of the codicil.

The trial court set forth the pertinent facts supporting its rulings, in relevant part, as follows.[3]

A. Background

In 1998, Burlin moved from the east coast to his residence after the death of his wife; neither of them had children. Over time, Burlin became friends with James and Hoover. "Both men were younger than Burlin by more than a decade but were, if not Burlin's equal, certainly his intellectual peers. Significantly, the three men shared a deep interest in the theatre: James as an actor, Hoover as a writer, and Burlin as a patron. James and Hoover became physical and financial caretakers of Burlin as his health failed."

"Burlin suffered heart attacks in 2011 and 2013. After each, he became increasingly frail and reclusive. Particularly following the second attack, Burlin became depressed and resigned. He rarely left his home; indeed, he rarely left the second floor of his home, where both his bedroom and TV room were. He let other close friendships wither for lack of enthusiasm and engagement. During this time, he became far more dependent on Hoover and James."

"James had met Burlin through their shared interest in theatre. In 2007, James moved into the cottage in the rear of the house next to Burlin's. Burlin began paying James a monthly stipend, ostensibly to support James's work as an actor. James relied

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insufficient to require consideration or comment." (*Ibid.*; see *Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 179 ["[f]ailure to provide proper headings forfeits issues that may be discussed in the brief but are not clearly identified by a heading"].)

[3] Pursuant to the California Rules of Court rule 8.90(b)(10), governing "Privacy in Opinions," we refer to certain witnesses by their initials.

upon this stipend as he had very limited income and, in exchange, provided companionship and ever-increasing care to Burlin."

"Hoover met Burlin in the same fashion. Hoover maintained his own residence on a houseboat . . . but, over time, came to take up a second residence on the first floor of Burlin's home – also to assist in Burlin's care. . . . As with James, Hoover was the subject of Burlin's inter vivos largesse. In particular, after Burlin's second heart attack, Hoover was in control of Burlin's finances and, as such, had unfettered use of them. Hoover spent lavishly. In particular, Hoover spent thousands of dollars on Louis Ernst. Ernst is a young man whom Hoover met . . . and eventually moved him into Burlin's unfinished garage so that he was available to help with the more-physical aspects of Burlin's care. . . ."

"Hoover was also responsible for introducing Felix into these circumstances. Felix, a young Mexican immigrant, began by doing repair work on Hoover's houseboat and later was brought by Hoover to make repairs on Burlin's home. Felix appears to have done light carpentry and repairs at the home for approximately three years prior to Burlin's death. During this time, Felix was included as a guest at dinners celebrating Burlin's birthday and Thanksgiving. Ernst was also present at some of these dinners."

B. Events Surrounding the Procurement of the Grant Deed and Codicil

"In February 2016, Burlin's condition deteriorated rapidly. On Wednesday, [February] 24th, Burlin was evaluated and approved for in-home hospice care. [A hospice nurse] provided the first services to Burlin on the morning of the 25th. At that time, Burlin indicated he was doing 'OK,' and even made a few humorous remarks. Both methadone and morphine were prescribed for pain management. The first administration of methadone occurred that night. A [hospital] bed was set up for Burlin in the TV room on the 26th. . . . [The hospice nurse] made home visits on Friday, the 26th; Monday, the 29th; Wednesday, March 2nd; Friday, March 4th; and Monday, March 7th. Hoover and James were present each time. [The hospice nurse] had phone consultations with Hoover

on March 1st, 3rd, and 7th. Burlin died the next day. [The hospice nurse] opined that Burlin was not well enough to leave the home on the 25th and that his mental condition deteriorated significantly between the 26th and 29th. [The hospice nurse] testified in overwhelmingly positive terms about the care being provided by the two men to Burlin, commenting, '[Burlin] adored them.' She never saw Felix at the house, and his name was never mentioned to her."

"According to Felix, Burlin was upset that Hoover and James were arguing over his finances and property and so decided he was going to give his house to Felix. [At his deposition, Felix testified that Burlin first mentioned the idea of giving him the house between Thanksgiving and Christmas of 2015. At trial, he seemed to testify that the topic first came up in January 2016. This point was one of many in which Felix testified in a confusing, if not evasive, matter.] [Felix testified at his deposition that Burlin told him he wanted to give him the house because he thought of him as a grandson and because the caregivers were taking advantage of him. At trial, Felix recanted, testifying only that he *thought* that was why Burlin had given him the house.] [Burlin] encouraged Felix to locate a grant deed template on line. Felix brought his laptop computer to Burlin in early February, and Burlin typed out the deed. [Curiously, typed in the deed is the following: 'Title Order No. ********.' This is the same number given by the county recorder's office to an earlier deed by which Burlin received the property, when it was recorded in 1999. Felix maintained that Burlin typed that information on the deed. Certainly, Burlin could not have done so from memory and would have had to have the older deed [in] hand. Felix made no mention of Burlin consulting the older deed when he composed the new one.] Felix then printed the deed and returned with it to Burlin's home on February 25th in the afternoon. He testified that, although his visit was unplanned, Burlin was dressed and waiting for him, and that Hoover and [James] were both away from the home. Felix helped Burlin into Felix's car, and the two men drove in search of a notary public. While driving, the idea of a mobile notary arose. [Felix testified both that Burlin

had first mentioned a mobile notary and that he, Felix, had first mentioned one.] Felix contacted such a notary . . . by phone and arranged to meet him at a gas station . . . several miles from Burlin's home."

The notary "testified that Felix drove into the [gas] station, accompanied by an elderly man in the front passenger seat. [The notary] was somewhat equivocal in identifying a photograph of Burlin as the elderly man. However, he recalled that the man looked to be a mix of Caucasian and Mexican and did not have a beard. Burlin certainly had a beard at the time and appeared to be Caucasian. Per [the notary], the elderly man struggled to put a clear thumbprint in the notary journal. Most significantly, [the notary] testified that he copied the elderly man's identifying information directly from the man's *unexpired* driver's license into the journal in its entirely. Burlin's driver's license bears [his full first, middle, and last name] and expired on October 7, 2013. However, the journal reflects only Burlin's middle initial and does so incorrectly as a 'D.' Additionally, the journal shows the [license] expiration date as October 7, 2019. Per DMV records, Burlin did not renew his license after 2013. He certainly was unable to drive after that time due to his second heart attack. Most importantly, the journal shows his license number as [a number totally distinct from], Burlin's actual driver's license number. By contrast, the journal shows Felix's name accurately and in its entirety, as well as his correct driver's license number. According to [the notary], both men signed the deed and the notary journal and placed their thumbprint[s] in the journal. The elderly man did so while sitting in the vehicle. The deed presented to the court has thumbprints next to each signature. [The notary] testified the thumbprints were not present when he notarized the document; Felix testified the thumbprints were placed there during the notarization. According to Felix, Burlin had insisted that they accomplish the transfer secretly so as to avoid conflict with Hoover and James, and Felix was able to return Burlin to the home without Hoover, James or Ernst learning of the trip." An expert

fingerprint examiner testified that Burlin's thumbprint was on the deed, but the thumbprint in the notary journal was not Burlin's thumbprint.

"On Saturday, February 27th, Felix happened to stop by the home – again, when no one but Burlin was present. During this visit, Burlin told Felix that he wanted to execute a codicil to his will in order to insure Felix would receive his house. Using Felix's laptop, Burlin typed out the codicil to that effect. [Whoever typed the codicil twice misspelled James's middle name as Lewis.] Felix later added the formal subscription lines and printed the document. [He had not mentioned, at his deposition, this contribution to the completion of the codicil.] He returned later that day to give Burlin the document and an ink pad Burlin told him he should pick up at an office supply store. Burlin told Felix to find two witnesses for the codicil. Felix contacted a friend, S.A., and [an] acquaintance, C.P. [Felix] invited both men to have drinks with him on Sunday night, February 28th. Felix and [C.P.] both testified that they had never done anything social together before that date. The three men met at [a store] near Burlin's home and went to a nearby bar. Strangely, they did not go in[to] the bar because, as all three testified, it was not crowded enough. Felix then asked the two men to accompany him to his friend's house nearby to visit. All three men went to Burlin's home at around 8 p.m. They found [Burlin], yet again, unattended, just having [soiled himself] in his hospital bed and not having eaten. [The three men cleaned Burlin.] According to all three men, as soon as Burlin was cleaned up, he produced the codicil and asked the men to witness his signing of it. [S.A. and C.P.] witnessed Burlin sign the codicil and place his thumbprint on it." The expert fingerprint examiner testified that Burlin's thumbprint was on the codicil. "Felix took photographs of the men cleaning Burlin's bed and of Burlin signing the codicil. Despite the professed concern of all three men that Burlin was unattended, they left the home immediately after the execution of the codicil at about 8:30 p.m." The court further commented that "[t]he testimony of the three men as to the circumstances of the evening of February 28 is strikingly similar, so much so as to

suggest coaching. For instance, both [S.A. and C.P.] testified that, when the men found Berlin all alone in the home, Felix had asked, 'Where are the caregivers?' This choice of words – confirmed by both men - was certainly an odd one given that Felix was friends with both Hoover and James and knew their names. This is a small point among many that lend little credibility to their joint story. Neither [S.A. nor C.P.] questioned the very strange circumstances that Felix had placed them in. They both claimed to have read the codicil but not to have been concerned by its import. Somewhat paradoxically, they expressed concern about Burlin's physical well-being but, other than professing to have cleaned him up, they showed little regard for him. Indeed, they left immediately after the codicil was signed."

"Hoover's memory of the evening of [February 28th] is quite different. He gave Burlin a dose of morphine at 7 p.m. Felix and [C.P] arrived unannounced just after Burlin had soiled himself at around 8 p.m. All four men, now including Ernst who had been summoned from the garage to help, assisted in cleaning Burlin. There were no documents present. Ernst testified consistently with Hoover. Hospice notes indicate a call from Hoover at 10:20 p.m. describing Burlin's declining condition and that Hoover 'was able to clean [Burlin] up tonight with help from other friends.' Per the notes, Hoover reported the administration of morphine had occurred at 7 p.m."

"Felix returned to [Burlin's] home the next day. He testified to breaking up an argument between Hoover and James, though the pictures taken that day of all four men, including Burlin, show them smiling. Felix made no mention of the grant deed or codicil. He returned again on March 3rd, purportedly to check on Burlin, though he did not return again before Burlin's death because he was busy elsewhere. . . . Immediately upon Burlin's death, Hoover texted Felix with the news. Felix falsely reported that he was out of town and unable to come by the home. Three days later, Hoover was served with a notice of eviction by Felix, which Hoover immediately reported to James. This notice was the first either man was aware that Felix was the ostensible owner of the home." "At

his deposition, James claimed that Felix was not present at the home after Christmas of 2015. However, he conceded at trial that photographs of Felix with Burlin in the days before his death demonstrate otherwise."

"On March 3rd, a [probate] lawyer . . . came to the home in order to meet with Burlin and review the adequacy of the 2014 holographic will. Apparently Hoover located [the probate lawyer] but Burlin made the appointment by phone. [According to the file notes prepared by [the probate lawyer's] assistant, Hoover made the initial contact but was directed to have the actual client, Burlin, follow up with a confirming phone call. That call came from Burlin on March 1st, and per the assistant, Burlin had difficulty speaking over the phone.] [The probate lawyer] met privately with Burlin, who was in the hospital bed in the TV room. [The probate lawyer] believed that Burlin understood who she was and the nature of the visit, but she did not believe that Burlin was competent at that time to execute a new will. Additionally, she believed that the 2014 will was adequate. She agreed, however, to prepare a power of attorney designating Mastascusa, and then James, as Burlin's agent, based upon Burlin's comments that he trusted them with his affairs. During this brief conversation, Burlin did not tell her that such a document already existed. He also did not tell her that he had executed the grant deed and codicil in Felix's favor a few days before. Indeed, Felix's name apparently never arose. Burlin also never told her that he was being taken advantage of by Hoover and James. Burlin died before [the probate lawyer] . . . return[ed]."

The court also recounted the testimony of various witnesses concerning their relationship with Burlin, and their knowledge of any conflicts between Burlin and Hoover and James.

Mastascusa, the executor of Burlin's estate, testified that he "provided financial advice to Burlin over the years. Although he is not a lawyer, he occasionally consulted with Burlin on his estate plan because of Burlin's desire that Mastascusa serve as executor. Mastascusa had encouraged Burlin to rein in his spending and to prepare a new

will in light of the fact that several of the recipients of specific bequests in the original will were no longer alive. To that end, in 2014, Mastascusa sent Burlin a draft of a new will. Burlin never executed the draft but much of its language was incorporated into the 2014 holographic will. . . . [Mastascusa] spoke with [Burlin] by phone at the time of his last birthday dinner, October 7, 2015, and on February 28, 2016. Burlin never, at any time, mentioned Felix . . . nor did he ever complain that he was being taken advantage of by Hoover and James. In particular, in that final phone call between the men, Mastascusa told Burlin that he would take care of his estate as Burlin had asked. Although Burlin sounded weak, he did not mention any recent changes to his estate or estate plan. Mastascusa first heard of Felix after Burlin's death."

L.M., one of Burlin's close friends, was a witness to Burlin's 2014 holographic will. L.M. had been a guest at Burlin's last birthday dinner in October 2015. At that time, "Burlin was quite withdrawn and seemed not to be aware of who all the guests (including Felix and Ernst) were. [L.M.] noticed no discord between Hoover and James, in contrast to Felix who testified that the two men had argued in front of Burlin and [L.M.] at the dinner. [L.M.] testified that, other than this one dinner, [L.M.] had never seen Felix and that Burlin never mentioned [Felix] to [L.M.], nor had Burlin ever mentioned any concern that Hoover and James were taking advantage of him. [L.M.] last visited Burlin in his room the day before he died."

Mastascusa, Hoover, James, and three of Burlin's friends, "were uniform in their testimony that Burlin eschewed nearly all modern technology. He did not own a cell phone or laptop computer. He did not like to speak on the phone unless necessary. While an old word processor was located in the house, it was apparently stored out of the way and received no use. Efforts by his friends to engage Burlin in the use of electronic devices to expand his enjoyment of reading, music and theatre were met with indifference, impatience or outright derision. He was simply a man of the old school, who had little use for modern means of communication or information processing. This

evidence was offered to highlight the unlikelihood that Burlin, were he even well enough, would have been capable of creating the grant deed and the codicil on the computer, or of even suggesting to Felix how to obtain a template for the grant deed."

The court also considered the testimony of a neuropsychologist, who had reviewed Burlin's medical records and interviewed several trial witnesses. The neuropsychologist testified that, as of February 25, 2016, Burlin lacked the cognitive capacity to engage in testamentary planning or financial transfers. The neuropsychologist based his opinion on Burlin's long-standing cardiovascular disease, his increasing pain and discomfort, the medication he was taking, and his poor performance on a 2014 standardized test of cognition.

After considering all of the evidence, the trial court ruled in favor of James and Hoover. Specifically, the court declared the deed to be void and the codicil to be invalid on various grounds, including findings that both documents had been procured by undue influence exerted by Felix.

DISCUSSION

I. Standard of Review

We begin with our standard of review, which is well settled. " 'In general, in reviewing a judgment based upon a statement of decision following a bench trial, "any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]" [Citation.]' [Citation.]) 'We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment. [Citation.]' [Citation.] The testimony of a single witness may be sufficient to constitute substantial evidence. [Citation.]" (*Lui v. City and County of San Francisco* (2012) 211 Cal.App.4th 962, 969.)

Additionally, as an appellate court, "[i]t is not our task to weigh conflicts and disputes in the evidence. . . ." (*Duffy v. Cavalier* (1989) 215 Cal.App.3d 1517, 1539.)

"Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment. Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact, which must resolve such conflicting inferences in the absence of a rule of law specifying the inference to be drawn. . . ." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630–631.)

Felix's overarching premise is that the trial court committed reversible error by not considering certain evidence that he claims calls into question the court's findings. His briefs present isolated portions of "the evidence adduced at trial and point out its strengths and weaknesses. However, that showing is largely irrelevant to the issue on appeal: whether the evidence in [favor of James and Hoover] provides a sufficient basis for the [court's] findings. [Felix's] elaborate factual presentation is but an attempt to reargue on appeal those factual issues decided adversely to [him] at the trial level, contrary to established precepts of appellate review. As such, it is doomed to fail." (*Hasson v. Ford Motor Co*. (1982) 32 Cal.3d 388, 398–399.)

We find particularly appropriate to our review in this case the following maxims: A trier of fact "may accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted. [Citations.] As was said in *Nevarov v. Caldwell* (1958) 161 Cal.App.2d 762, 777 [327 P.2d 111], '[the trier of fact] properly may reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected available material. [Citations.]" (*Stevens v. Parke, Davis & Co*. (1973) 9 Cal.3d 51, 67–68.) "[N]either conflicts in the evidence nor ' "testimony which is subject to justifiable suspicion . . . justif[ies] the reversal of a judgment, for it is the exclusive province of the [trier of fact]

to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." ' [Citation.]" (*Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065.) These rules "will obtain even though to some triers of fact the evidence in the instant case would have seemed so improbable, impossible and unbelievable that a judgment contrary to that now on appeal would have inevitably followed." (*Romero v. Eustace* (1950) 101 Cal.App.2d 253, 254.)

Lastly, we note it is well settled that " '[t]he court's statement of decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case.' [Citations.] 'When this rule is applied, the term "ultimate fact" generally refers to a core fact, such as an essential element of a claim.' [Citation.] 'Ultimate facts are distinguished from evidentiary facts and from legal conclusions.' [Citation.] Thus, a court is not expected to make findings with regard to 'detailed evidentiary facts or to make minute findings as to individual items of evidence.' [Citation.] In addition, '[e]ven though a court fails to make a finding on a particular matter, if the judgment is otherwise supported, the omission is harmless error unless the evidence is sufficient to sustain a finding in favor of the complaining party which would have the effect of countervailing or destroying other findings.' [Citations.]" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 983.)

With these principles of law in mind we now address Felix's contentions.

I. Trial Court's Ruling Voiding Grant Deed and Award of Probate Code Section 859 Penalty

A. Statement of Decision

The trial court set forth its reasons for voiding the grant deed on the ground of undue influence, in pertinent part, as follows:

"Civil Code section 1575 defines undue influence as consisting: '(1) In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair

advantage over him. . . (2) In taking an unfair advantage of another's weakness of mind; or (3) In taking a grossly oppressive and unfair advantage of another's necessities or distress.' This standard has been applied to, as here, a challenge to an inter vivos transfer of property, as opposed to a testamentary transfer. Ordinarily, the party challenging the transfer of property would bear the burden of demonstrating undue influence by 'clear, satisfactory and convincing evidence.' [(*Pailhe v. Pailhe* (1952) 113 Cal.App.2d 53, 60.)]

" 'However, the cases make it evident that in order to prove that one is in a mentally weakened condition within the meaning of [Civil Code] section 1575 it is not necessary to show total incapacity to contract, but only that the grantor is lacking in such mental vigor as to enable him to protect himself against an imposition [citation]. . . . [W]ith respect to gifts or conveyances [i]nter vivos the suspectibility to imposition, the extreme age and infirmity, of the grantor, together with slight evidence of circumstances from which it may be inferred that the instrument was the product of coercion, will suffice to shift the burden and require the beneficiary to show affirmatively that the transaction was fair and free from influence [citations]. . . .' (*O'Neil v. Spillane* (1975) 45 Cal.App.3d 147, 155–156.)

"Just as in [*O'Neil v. Spillane*], the facts here demonstrate overwhelmingly that Burlin was 'susceptible to imposition on account of [his] age and mental infirmity.' Additionally, the record certainly gives 'rise to an inference that the transaction complained of was not the product of [Burlin's] free volition.' Burlin's need for assistance with his activities of daily living was long-standing by the time of February 2016. By the time of the deed's purported execution, he had just been approved for hospice care and would within hours begin a regimen of methadone and morphine for the pain and shortness of breath associated with end-stage cardiovascular disease. By the next day, a hospital bed had arrived to facilitate his care and comfort. Burlin's depression and dissociation from the people and activities that had brought him joy in life

began in earnest after his second heart attack in 2013. By February 2016, this turning inward was nearly complete. His mental acuity was certainly impaired by the time of the cognitive testing in 2014 and, per [the neuropsychologist], was to some degree masked by his lifetime of extraordinarily high intellectual functioning. The [surreptitiousness] of the creation and execution of the grant deed suggest the conveyance was not with Burlin's free volition. While Felix provides an explanation why Burlin did not want to tell Hoover and James about the conveyance, the circumstances are nonetheless troubling. In particular, that no objective person – lawyer or friend – was informed until after Burlin's death is problematic for Felix's position. On this record, the burden of proof certainly shifts to him. He failed to counter this burden as well. The only testimony suggesting that Burlin freely and knowingly conveyed the house to Felix was Felix's. The court found Felix to be a prevaricator of enormous proportions. He repeatedly contradicted his deposition testimony; he was highly evasive under questioning in open court; and his explanations for his own and Burlin's conduct were patently unbelievable and/or unreasonable. In particular, the circumstances as proffered by Felix of the deed's creation strain credulity. To entertain the notion that Burlin in his severely reduced state would have been capable or even desirous of creating the deed himself, in all its detail, even using a template provided by Felix is unreasonable. Why an 87-year-old dying man would choose that moment to begin using a laptop computer was never satisfactorily explained. . . . [E]ven if Burlin were angry with Hoover and James such that he wanted to change the disposition of the house, why he would choose Felix, a person with whom he had little relationship and nothing in common, was not satisfactorily justified. [Felix's testimony that Burlin was so angry at Hoover and James based on their purported squabbling over the house and finances as to disinherit them of the house is exceedingly thin. Certainly, Hoover and James were not personally close and may have been rivals for Burlin's attention. Additionally, Hoover's handling of the finances must have been frustrating to James, as he admitted. However, their disputes do

not seem to have risen to a level justifying their disinheritance of the house. By distinction, Hoover's free spending would, in the court's view, be more likely to have concerned Burlin. Burlin appears to have been very accepting of Hoover's idiosyncrasies. But, had that patience run thin, concern over Hoover's spending does not explain why Burlin choose to disinherit James of the house.] Certainly, [L.M.], Martin Mastascusa, and [M.S., another friend], to name three, were more likely recipients of Burlin's bounty."

The court also stated its reasons for awarding James and Hoover a section 859 penalty, payable by Felix, as follows.

"Finally, I consider the award of penalties pursuant to Probate Code section 859, which requires that a person who in bad faith or by undue influence wrongfully takes the property of an elder 'shall be liable for twice the value of the property recovered by an action under this part.' As outlined above, I find that Felix acted in bad faith and employed undue influence to wrongfully take Burlin's property. In light of that finding, the court has no discretion but to impose the penalty outlined in section 859: twice the value of the property recovered, according to proof. . . . [James and Hoover] are directed to submit proof of that value with their request for costs and fees."

B. Analysis

1. Substantial Evidence Supports Court's Ruling that Grant Deed was Procured by Undue Influence Exerted by Felix

Felix contends there was insufficient evidence to support the court's finding that the deed was procured by his undue influence on Burlin. However, on appeal we do not review the court's findings for substantial evidence that would support findings in favor of Felix, as he suggests by his arguments. Rather, as we have noted, our authority is limited to determining whether there is substantial evidence to support the findings in favor of James and Hoover. "If this 'substantial' evidence is present, *no matter how slight it may appear in comparison with the contradictory evidence*, the judgment must

be upheld." (*Howard v. Owens Corning*, *supra*, 72 Cal.App.4th at p. 631; italics added.) Moreover, "[*i]f such substantial evidence be found, it is of no consequence that the [trier of fact] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.* [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.) Therefore, we must reject Felix's "attempt to reargue on appeal those factual issues decided adversely to [him] . . . ." (*Hasson v. Ford Motor Co*., *supra*, 32 Cal.3d at pp. 398–399.)

In any event, an examination of the record demonstrates that the court's undue influence ruling is supported by: (1) Felix's sworn testimony about the circumstances surrounding Burlin's use of a laptop computer to fill in the deed form and his signing of the deed at the gas station before a mobile notary public (which the court found not to be credible or reasonable); (2) the notary's testimony that he only asked for thumbprints to be placed in the notary journal, and not on the notarized documents, and that the deed in question did not contain any thumbprints on it when he notarized the deed; (3) the testimony of the expert fingerprint examiner that the thumbprint in the notary's journal was not Burlin's thumbprint; and (4) Felix's failure to reveal the existence of the deed until after Burlin's death. Felix's reliance on evidence regarding Burlin's mental acuity at the time of the creation and execution of the deed is misplaced. "Soundness of mind and body does not imply immunity from undue influence. It may require greater ingenuity to unduly influence a person of sound mind and body, and more evidence may be required to show that such a person was overcome than in the case of one weak of body and mind." (*Estate of Olson* (1912) 19 Cal.App. 379, 386.) Here, the trial court rationally found that Felix's elaborate description of Burlin's purported creation of the deed, and the circumstances surrounding Burlin's purported signing of the deed before the notary, coupled with Felix's attempts to speak with the notary during the litigation, strongly suggested that Felix understood the deed would not withstand fair scrutiny. In sum, we see nothing in the evidence cited by Felix that calls into question the court's

finding that he exerted undue influence in Burlin's creation and execution of the deed transferring his residence to Felix.

2. Probate Code Section 859 Penalty

Felix challenges the trial court's award of the section 859 penalty on the ground that, in the portion of the statement of decision specifically discussing the penalty, the court does not state the ultimate facts in support of its ruling that Felix acted in bad faith and exerted undue influence to wrongfully take Burlin's property. Felix contends he specifically objected to the claimed deficiency in his objections to the statement of decision, and therefore findings in favor of the court's ruling should not be implied by the judgment. We see no merit to the claim. The trial court made clear in its statement of decision that its findings regarding Felix's conduct and tactics, outlined in detail in earlier portions of the statement of decision, were the same findings it was relying on to support its finding of bad faith necessary to award a section 859 penalty.

Nor are we persuaded by Felix's substantive challenge to the trial court's finding of bad faith. We initially reject Felix's reliance on his objections to the statement of decision: "While circumstantial evidence of undue influence is set forth in the Statement, the only ultimate facts leading to this conclusion are that Burlin was sick, and that the transaction[ ] [was] done with haste and secrecy, and at an inappropriate time and/or place. The statement does not explain what actions were accomplished by Felix in bad faith." However, Felix's objections refer to the court's findings regarding the execution of the codicil, not to the findings regarding the execution of the deed.

We also see no merit to Felix's contention that the court's finding that he exerted undue influence in bad faith to procure the deed cannot stand because the court failed to consider certain evidence and made unreasonable inferences. Felix argues that the court unreasonably assumed that Felix knew or should have known that Burlin lacked the legal capacity and competence to execute the deed and that Felix had taken advantage of Burlin due to his old age and infirmity. Felix points to evidence that the signature and

thumbprint on the deed belonged to Burlin and isolated portions of the record containing evidence that: (1) Burlin was making financial and medical decisions during the relevant time; (2) Burlin had retained an attorney to draft a power of attorney for him after executing the deed and codicil; and (3) Burlin had cut Hoover off from controlling his finances. However, we see nothing in the cited evidence that calls into question the court's finding that Burlin's creation and execution of the deed was the product of undue influence exerted by Felix in bad faith.

As our colleagues in Division 2 have stated, " '[B]ad faith' can be may different things, depending on the context. For example: The general rule is that an agent is not liable on a written contract in the name of the principal. So, if the agent has no authority to make the contract, the usual remedy of the third party is on the warranty of authority. But if, in addition to the lack of authority, there is 'bad faith' – that is, the agent enters into the contract without believing, in good faith, that he or she has authority to do so – the California rule makes the agent liable on the contract as a principal. [Citations.] [¶] Code of Civil Procedure section 580b is the anti-deficiency statute, shielding a mortgagor from liability in damages. However, if the mortgagor commits waste in 'bad faith,' he or she can be liable for damages. [Citation.] [¶] The most frequent application of 'bad faith' is in insurance cases, the concept based on a tortious breach of the covenant of good faith and fair dealing. [Citations.]." (*Hill v. Superior Court* (2016) 244 Cal.App.4th 1281, 1287–1288.) "As noted in *Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 100 [citation], ' " '[b]ad faith, is defined as '[t]he opposite of "good faith," generally implying or involving . . . a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake . . ., but by some interested or sinister motive[,] . . . not simply bad judgment or negligence . . . .' " ' " (*People v. Superior Court* (*Sokolich*) (2016) 248 Cal.App.4th 434, 447.)

Applying the aforenoted principles governing "bad faith" determinations, we conclude there is substantial evidence in the record to support the court's ruling that Felix exerted undue influence in bad faith in the procurement of the deed for all the reasons we previously stated support the court's finding of undue influence. Because that evidence was sufficient to support the finding that Felix had procured the deed by exerting undue influence in bad faith, we conclude his claim of error challenging the award of a section 859 penalty fails.

II. Trial Court's Ruling Invalidating Codicil

A. Relevant Facts

In its statement of decision, the trial court set forth its reasons for invalidating the codicil on the ground of undue influence, explaining, in pertinent part, as follows:

"Undue influence as grounds for disturbing a testamentary act has been described as follows: 'Thus such influence must destroy the testator's free agency and substitute for his own another person's will. Evidence must be produced that pressure was brought to bear directly upon the testamentary act . . . . [The influence] must amount to *coercion* destroying free agency on the part of the testator. [T]he circumstances must be *inconsistent* with voluntary action on the part of the testator; and [the] mere opportunity to influence the mind of the testator, even coupled with an interest or a motive to do so, is not sufficient. Undue influence, then, is the legal condemnation of a situation in which extraordinary and abnormal pressure subverts independent free will and diverts it from its natural course in accordance with the dictates of another person. It is akin to fraud. [¶] The presumption in favor of a will may be neutralized by a presumption that undue influence was brought to bear on the testator.' " However, the trial court found that the presumption of undue influence did not arise in this case because the court could not find that a confidential relationship existed between Burlin and Felix.

Nonetheless, the trial court found: "Hoover and James may demonstrate undue influence even without the common law presumption recited above. Their burden of

proof is one of clear and convincing evidence. [(See *Conservatorship of Davidson* (2003) 113 Cal.App.4th 1035, 1059, disapproved on another ground in *Bernard v. Foley* (2006) 39 Cal.4th 794, 816, fn. 14.)] Effective 2014, Probate Code [section] 86 incorporates the definition of undue influence found in Welfare and Institutions Code section 15610.70, as a supplement to the common law definition of that term. Per that latter section, undue influence is defined as 'excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity.' Among the factors to be considered under the statute are the vulnerability of the victim, the influencer's apparent authority, the actions or tactics of the influencer, and the equity of the result. In assessing the vulnerability of the victim, as relevant here, the court must consider the victim's incapacity, illness, disability, age, education, impaired cognitive functioning, isolation, dependency and whether the influencer knew or should have known of the victim's vulnerability. Among the factors establishing apparent authority is whether the influencer was a care provider. In assessing the actions or tactics of the influencer, the court must consider whether haste or secrecy were used in effecting changes in personal or property rights and whether such changes were effected at inappropriate times or places. Finally, in considering the equity of the result, the court must look to whether there was a divergence from the victim's prior intent or course of conduct and the appropriateness of the change in light of the length and nature of the relationship between the victim and influencer.

"Recall again the circumstances of the codicil's alleged creation: Burlin, at 87 years of age, was under hospice care, lying in a hospital bed in his home, under the influence of methadone and morphine and the effects of end-stage cardiovascular disease. His cognitive functioning was demonstrably impaired. He was lying in his own [waste]. He had to be cleaned up by Felix, who had never done this for Burlin before, and two strangers. He was wholly unattended by his regular caregivers and complained of hunger. At this moment in time, Felix unquestionably served as a care provider and was

well aware of Burlin's vulnerability. Burlin then made a testamentary transfer that was extraordinarily unusual, thereby divesting his longtime friends and caregivers of the home, passing over more obvious candidates for this largesse and settling the home on a man with whom he had little relationship and nothing in common. The transfer was made in haste and secrecy and was certainly accomplished at an inappropriate time and place. On this record and in light of the court's credibility evaluations to the detriment of Felix, [S.A.] and [C.P.], it is far more likely that Felix prepared the codicil and brought it to Burlin to be signed that evening, rather than the suggestion that Burlin had the codicil and produced it immediately after being cleaned up and then asking the men to witness it. These are circumstances 'in which extraordinary and abnormal pressure subverts independent free will and diverts it from its natural course in accordance with the dictates of another person.' [Citation.] [¶] [Hoover and James] have carried their burden of demonstrating undue influence by clear and convincing evidence. On that basis, the codicil is deemed invalid."

B. Analysis

1. Sufficiency of the Evidence

Again relying on isolated portions of the record, Felix contends the court erred in its findings regarding the factors set forth in Welfare and Institutions Code section 15610.70. We see no merit to Felix's claims.

Welfare and Institutions Code section 15610.70 enumerates, *but does not limit*, the factors to be considered in resolving a claim of undue influence of a testamentary document. (*Id*., subd. (a)(1)–(4).) This is so because "[i]t is impossible to enumerate all the conditions, facts or circumstances which may be deemed to constitute [undue influence], coupled with the other necessary elements which will render a will invalid on the ground of undue influence. The sufficiency of evidence showing activity [of] undue influence must necessarily depend upon the particular facts of each case. The contestant is entitled to the full force of the evidence adduced in support of his charge of undue

influence, together with all reasonable inferences which may be drawn therefrom. Where there is substantial evidence to support the finding of undue influence, the verdict and the judgment rendered in accordance therewith should be affirmed on appeal. The trier of the fact is the sole judge of the credibility and weight of evidence in a will contest. [Citation.]" (*Estate of Abert* (1949) 91 Cal.App.2d 50, 60–61.)

Felix makes no objection, and indeed, we see no basis for an objection, to the court's finding that Burlin's age, infirmity, isolation, dependency, and terminal illness made him vulnerable to undue influence. (Welf. & Inst. Code, § 15610.70, subd. (a)(1).) In so concluding, we are not persuaded by Felix's reliance on evidence demonstrating Burlin's mental acuity at the time of the execution of the codicil. As we have stated, "Soundness of mind and body does not imply immunity from undue influence." (*Estate of Olson, supra,* 19 Cal.App. at p. 386.)

We also see no merit in Felix's challenge to the court's finding that, immediately before the signing of the codicil, Felix was "unquestionably" serving as a "care provider and was well aware of Burlin's vulnerability." Felix contends the court erred in its finding because he was "acting as a good Samaritan," not a "care provider." He contends that the concept of a "care provider" as used in Welfare and Institutions Code section 15610.70, should be limited to a "care custodian," as defined in Welfare and Institutions Code section 15610.17 and Probate Code section 21362, subdivision (a). He further argues that his conduct did not make him a "care custodian," because it is undisputed that on the evening in question he was not being paid to help Burlin, but he had only a personal relationship with Burlin going back several years, and he did what any friend or good Samaritan would do in the same circumstances.

Since 2014, Probate Code section 86 provides that the term "undue influence," is to have the same meaning as defined in Welfare and Institutions Code section 15610.70. In the latter section, the Legislature enumerated several factors for the purpose of establishing "a modern definition of 'undue influence,' " to supplement the common law

definition of undue influence as set forth in Civil Code section 1575, which had not been revised since it was enacted in 1872. (See Ass. Comm. on Aging and Long-Term Care, Analysis of Ass. Bill No. 140, as amended April 10, 2013 [adding Welfare and Institutions Code, § 15610.70], at pp. 4, 5.) One of the factors enumerated in Welfare and Institutions Code section 15610.70 is whether the purported "influencer" had "apparent authority" over the decedent. (*Id.*, subd. (a)(2).) The statute enumerates "a care provider" (*Ibid*.) as among those with apparent authority, for the purpose of describing "persons who occupy positions of trust and who thus might more easily unduly influence an elder." (See Letter from Assembly member Roger Dickinson, regarding the intent of [Welf. & Inst. Code, § 15610.70], reprinted at 52 West's Ann. Prob. Code (2019 supp.) foll. § 86, p. 15.) However, the statute does not provide a definition of a "care provider." Thus, "we are, absent contrary direction, bound to give the words the Legislature chose their usual and ordinary meaning. [Citation.]" (*Bernard v. Foley*, *supra*, 39 Cal.4th at p. 807 (*Bernard*).)

As such, the trial court here could and did reasonably find that Felix was acting as a "care provider" based on his act of assisting with Burlin's hygiene due to his dependent condition on the evening of February 28. "[N]othing in the statute's structure, terms or language authorizes us to impose a professional or occupational limitation on the definition of 'care provider' (Welf. & Inst. Code, § 15610.70, [subd. (a)(2)]) or to craft a preexisting friendship exception thereto." (*Bernard*, *supra*, 39 Cal.4th at p. 809 [finding no statutory limitation or reason to impose professional or occupational limitation or preexisting friendship exception on the definition of "care custodian" in Welf. & Inst. Code § 15610.17].) We recognize that Probate Code, section 21362, subdivision (a), provides that for the purposes of applying a statutory presumption of undue influence for certain enumerated transfers to "care custodians," " 'care custodian' does not include a person who provided services without renumeration if the person had a personal relationship with the dependent adult (1) at least 90 days before providing those services,

(2) at least six months before the decedent adult's death, and (3) before the dependent adult was admitted to hospice care, if the dependent adult was admitted to hospice care." However, had the Legislature wanted to adopt the definition of "care custodian" in Probate Code, section 21362, subdivision (a)(2), as the definition of "care provider" in Welfare and Institutions Code section 15610.70 (from which Probate Code section 86 imports the definition of "undue influence"), thereby "exemp[ting] preexisting personal friends from the definition of [care provider], it could have done so. 'It is the role of the courts to interpret and apply the laws as enacted, not to usurp the legislative function.' " (*Bernard*, *supra*, at p. 811.) As the court explained in *Bernard*, " 'the Legislature was aware that certain individuals are uniquely positioned to procure gifts from elderly persons through . . . undue influence.' [Citation.] Regrettably, preexisting personal friendship is no guarantee against the exercise of . . . undue influence over dependent adults.' " (*Ibid.*)

We also see no merit to Felix's challenges to the court's finding that the execution of the codicil was "made in haste and secrecy and was certainly accomplished at an inappropriate time and place." In challenging the ruling, Felix asks us to consider isolated portions of the record, arguing that the court failed to consider the codicil was executed at a time when Burlin was bedbound, and therefore, it was signed at the only place where it could have occurred, and was, consistent with the time (nighttime) and place (his bedroom) he had signed the 2014 holographic will; that Burlin regularly kept late hours; that James testified that Felix was aware of Burlin's schedule and knew evenings were a good time to meet with him because Burlin was a night-owl; and that because Burlin was facing imminent death, any "haste and secrecy," if it existed, was Burlin's, not Felix's. However, while the 2014 holographic will was signed at nighttime in Burlin's bedroom, as so testified to by L.M., there is no evidence that the circumstances surrounding the signing of that earlier will document were in any way like

the situation that occurred on February 28, 2016, as testified to by Felix, S.A., and C.P., and graphically recounted by the trial court in its statement of decision.

Felix also challenges the court's finding that, "[o]n this record and in light of the court's credibility evaluations to the detriment of Felix, [S.A.] and [C.P.], it is far more likely that Felix prepared the codicil and brought it to Burlin to be signed that evening, rather than the suggestion that Burlin had the codicil and produced it immediately after being cleaned up and then asking the men to witness it." In support of his argument, Felix contends there is no evidence to support the court's supposition because he testified that he had never seen the 2014 holographic will before this litigation and he had no knowledge of the contents of the 2014 holographic will, and that the 2014 holographic will had remained in Hoover's possession. However, Felix misconstrues the court's comment. The court had already found either incredible or unreasonable Felix's claim that Burlin had typed the codicil without any assistance from Felix. We read the court's use of the word "prepare" as referring to the physical typing and printing of the codicil and not necessarily as a finding that Felix had created the text without any assistance from Burlin. When the comment is considered in that context, we see no merit to Felix's claim of error.

For similar reasons, we find no merit to Felix's claim that there was no substantial evidence to support the court's finding that Hoover had no motive to misrepresent the February 28 incident to hospice personnel. The court's finding was based on the fact that, at the time Hoover reported what occurred on February 28 to hospice personnel, Hoover had no knowledge that Burlin had previously transferred the residence to Felix by deed or that Burlin had signed a codicil that evening. Other evidence in the record that might call into question Hoover's motive to misrepresent the incident to hospice personnel was a matter to be resolved by the court.

Lastly, we see no merit to Felix's challenge to the court's finding that upholding the codicil would be inequitable. Again, in support of his argument, Felix asks us to consider evidence from which he argues that the court should have found in his favor. However, as we have noted, we look only at the evidence supporting the successful party and disregard any contrary evidence. (*Estate of Baker* (1982) 131 Cal.App.3d 471, 477.) Under this standard, we are compelled to conclude that the court's finding of an inequitable result if the codicil were upheld is supported by substantial evidence for the reasons set forth in its statement of decision.

2. Exclusion of Exhibit 507 Photograph

At the conclusion of trial, Felix sought the admission of Exhibit 507, a photograph depicting Burlin in bed signing a document that was purportedly the codicil produced in court, time and date stamped February 28, 2016, 8:18 p.m. The court sustained the objection by James and Hoover to the admission of the exhibit on the ground that it had not been produced before trial prior to the cutoff date for discovery. Felix contends the court erred in excluding the exhibit as a sanction for violation of the discovery rules and further contends that exclusion of the exhibit was prejudicial and requires reversal.

We disagree. Even assuming the court erred in excluding the exhibit, Felix has failed to demonstrate prejudice. "It is well settled that the erroneous . . . exclusion of evidence does not require reversal except where the error . . . caused a miscarriage of justice. [(Evid. Code, § 354.)] '[A] "miscarriage of justice" should be declared only when the [appellate] court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' " (*People v. Richardson* (2008) 43 Cal.4th 959, 1001, quoting *People v. Watson* (1956) 46 Cal.2d 818, 836.) Felix argues that exclusion of the exhibit was "highly prejudicial . . . because it provided direct evidence substantiating [his] version of the cleanup story, and directly contradicts the sworn testimony of Hoover and Ernst." However, in reaching its finding

on the issue of undue influence, the court appears to have taken into account and assumed that Burlin had signed the codicil on February 28, 2016, shortly after 8:00 p.m. Nonetheless, the court found the circumstances of that evening, as explained by Felix and the witnesses who had signed the codicil, demonstrated that Burlin's execution of the codicil was the result of undue influence exerted by Felix. After examining the record, we can confidently say that there is no reasonable probability that the outcome would have been different had the photograph been admitted into evidence. Accordingly, Felix's claim of reversible error fails.

III. Conclusion

Because we have determined that the trial court's findings on the issues of undue influence and bad faith support the amended judgment in favor James and Hoover, we do not need to address Felix's additional arguments. "If the *decision* of [the trial] court is correct on any theory of law applicable to the case, the judgment or order will be affirmed regardless of the correctness of the grounds upon which the [trial] court reached its conclusion." (*Estate of Beard* (1999) 71 Cal.App.4th 753, 776.)

DISPOSITION

The amended judgment, filed on October 27, 2017, is affirmed. Respondents, Tom Hoover and Richard Louis James, are awarded costs on appeal.

_____
Petrou, J.

WE CONCUR:

_____
Fujisaki, Acting P.J.

_____
Wiseman, J.[*]

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[*] Retired Associate Judge of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.